

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

DAB, INCORPORATED, a Nebraska Corporation; NCS TRANSPORTATION, INC., a Nebraska Corporation; CAROL A. BENSON, and MARVIN D. BENSON,

Plaintiffs,

vs.

SUNBELT RENTALS, INC., a North Carolina Corporation;

Defendant.

**7:16CV5004**

**ORDER**

Defendant has moved to change the trial location to Lincoln, Nebraska. ([Filing No. 54](#)). For the reasons discussed below, the motion will be granted, and this case will be tried in Lincoln, Nebraska.

Under the court's local rules, when deciding the place of trial "the judge shall consider the convenience of litigants, witnesses and counsel," NECivR. 40.1(b)(1), with the convenience of the litigants and witnesses generally afforded greater weight than the convenience of counsel. [Bank of Beaver City v. Southwest Feeders, L.L.C.](#), No. 4:10CV3209, 2011 WL 116863, at \*1 (D. Neb. Jan. 13, 2011).

Plaintiffs are residents and businesses located in Bertrand, Nebraska. They are represented by attorneys in Kearney, Nebraska. Defendant is a North Carolina corporation represented by attorneys from Omaha, Nebraska. The claims raised in Plaintiffs' complaint and Defendant's counterclaim concern Plaintiffs' inventory located at businesses in five Nebraska cities: Lincoln, Hastings, Carney, Grand Island, and Columbus. Defendant's personnel from

these locations may be witnesses at trial, and Defendant may also call witnesses from Fort Mill, South Carolina.

As to travel accommodations, those witnesses traveling from South Carolina will have an easier time obtaining flights into Lincoln, Nebraska. And as to the employees who are still working in Nebraska, with the exception of Kearney, Nebraska, all locations are closer to Lincoln. Although Plaintiffs reside closer to North Platte than Lincoln, Plaintiff Marvin D. Benson frequently travels to Lincoln, and the individual Plaintiffs own real estate in Lincoln, Nebraska. Plaintiffs' counsel office in Kearney, Nebraska, is only approximately 30 miles closer to North Platte than to Lincoln.

Having considered the convenience of litigants, witnesses, and counsel as supported by the evidence of record, the court finds that, on balance, Lincoln is the proper location for the trial of this case.

Accordingly,

IT IS ORDERED:

- 1) The motion to change the trial location, ([Filing No. 54](#)), is granted.
- 2) The trial of this case will be held in Lincoln, Nebraska.

October 17, 2017.

BY THE COURT:

*s/ Cheryl R. Zwart*  
United States Magistrate Judge